

Introduced by Senator Battin

January 14, 2005

An act to add Section 1363.03 to the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

SB 61, as introduced, Battin. Common interest developments: elections.

Existing law creates and regulates common interest developments and requires them to have a recorded declaration containing specified information and permits them to levy assessments. Existing law establishes, in certain situations, voting requirements for amendments of the declaration and the levy of assessments. Existing law requires that a common interest development be managed by an association. Existing law regulates a broad range of activities associated with statewide, local, and special elections.

This bill would require that elections within a common interest development for specified matters be held by secret ballot, as specified. The bill would prohibit a person from counting votes in an election in which he or she is a candidate. The bill would establish additional procedures for notification of elections and storage and review of election results, and would require that elections held by mailed, written ballot be conducted according to specified provisions. The bill would permit a member of an association to bring a civil action, as specified, for violations of these provisions by his or her association.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1363.03 is added to the Civil Code, to read:

1363.03. (a) Elections within a common interest development regarding assessments, selection of association board members, and amendments to governing documents, shall be held by secret ballot. Any instruction given in a proxy issued for an election that directs the manner in which the proxy holder is to cast the vote shall be set forth on a separate page of the proxy that can be detached and given to the proxy holder to retain. The proxy holder shall cast the member's vote by secret ballot. A person shall not count votes in an election in which he or she is a candidate.

(b) Election ballots shall be stored by the association in a secure place for no less than one year after the date of the election. In the event of a recount or other challenge to the election process, the association shall, upon written request, make the ballots available for inspection and review by association members or their authorized representatives. In an election conducted by mailed, written ballot, any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.

(c) The board of directors of an association shall notify all of the eligible voters of the association of an election by first-class mail postage prepaid not less than 10 days and not more than 60 days prior to the occurrence of the election, except as provided in subdivision (c) of Section 1355.5, as it pertains to notification requirements.

(d) If the election is held by mailed, written ballot, the election and balloting shall be conducted in accordance with Section 7513 of the Corporations Code, notwithstanding any provisions to the contrary in the governing documents. In this event, the written ballots with the signatures of the voters affixed to them shall be timely mailed to an independent third party who shall verify the signature by comparing it to those signatures in records on file with the association at the time of the notification of the election. The independent third party shall validate, tabulate, and certify the vote, and the results shall be promptly reported to the board of directors of the association. For purposes of this section, a

1 licensee of the State Board of Accountancy is deemed an
2 independent third party.

3 (e) The results of an election shall be recorded in the minutes
4 of the next meeting of the board of directors and shall be
5 available for review by members of the association.

6 (f) A member of an association may bring a civil action for
7 declaratory relief, injunctive relief, restitution, or a combination
8 thereof for a violation of this section by an association of which
9 he or she is a member.

10 (g) The provisions of this section apply to both incorporated
11 and unincorporated associations.

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